(2)

No. 06-124

Supreme Court, U.S.
FILED
AUG 25 2006

CLERK

In The
Supreme Court of the United States

ALASKA RIGHT TO LIFE COMMITTEE,

Petitioner,

v.

BROOKE MILES, ANDREA JACOBSON, LARRY WOOD, MARK HANDLEY, JOHN DAPCEVICH, and SHEILA GALLAGHER,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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QUESTION PRESENTED

Whether Alaska's definition of "electioneering communication" in its state campaign finance disclosure laws violates the First Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-41a) is reported at 441 F.3d 773. The opinion of the district court (Pet. App. 42a-48a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 22, 2006. A petition for rehearing was denied on April 5, 2006. Pet. App. 49a. The petition for a writ of certiorari was filed on July 24, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioner Alaska Right to Life Committee (AKRTL) brought this case to challenge various Alaska campaign finance disclosure laws applicable to electioneering. AKRTL is a "nongroup entity" under Alaska law seeking to make "electioneering communications" without having to comply with Alaska's campaign finance disclosure requirements. Pet. 6, 11.[1]

[1] A "nongroup entity" is a "person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that (A) cannot participate in business activities; (B) does not have shareholders who have a claim on corporate earnings; and (C) is independent from the influence of business corporations[.]" Pet. App. 60a-61a (Alaska Stat. § 15.13.400(13)). An "electioneering communication" is "a communication that (A) directly or indirectly identifies a candidate; (B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and (C) occurs within the 30 days preceding a

(Continued on following page)

The laws in question are rooted in comprehensive campaign finance reform legislation enacted by the Alaska legislature in 1996 "to substantially revise Alaska's election campaign finance laws in order to restore the public's trust in the electoral process and to foster good government." Pet. App. 6a (quoting 1996 Alaska Sess. Law ch. 48 § 1). The Alaska Supreme Court upheld most of this legislation in *State of Alaska v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), *cert. denied*, 528 U.S. 1153 (2000).

There, the Alaska Supreme Court considered the constitutionality of a statute that banned independent expenditures by an entity supporting or opposing a candidate for state office unless the entity was a "group." *Id.* at 608. "Group" was defined as two or more individuals acting jointly who organize for the principal purpose of influencing one or more elections and who take action the major purpose of which is to influence the election. *Id.* n.65. The court upheld the ban as applied to those organizations potentially able to amass great wealth through state-created advantages, such as corporations and labor unions. *Id.* at 610. The court exempted from the ban those entities that could not participate in business activities, had no shareholders who have a claim on corporate earnings, and were independent from the influence of business corporations. It did so in order to be consistent with this Court's decisions in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) and *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990). *Id.* at 611-13; *see also* Pet. App. 6a-7a (Court of Appeals' discussion of *Alaska Civil Liberties Union*).

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general or municipal election[.]" Pet. App. 58a (Alaska Stat. § 15.13.400(5)).

In 2001 and 2002, the Alaska Legislature again amended Alaska's campaign finance laws. It added provisions requiring those organizations that the Alaska Supreme Court had exempted from the ban to disclose their expenditures for electioneering communications. Pet. App. 9a-10a. Alaska patterned its requirements on the federal requirement in the Bipartisan Campaign Reform Act of 2002, Public L. No. 107-155, which amended the Federal Election Campaign Act. Ex. 9 to Miles Opposition to Motion for Summary Judgment [hereinafter Miles Opp. Summ. J.] at 4-5 (Jan. 27, 2003).

Turning to the facts and proceedings in this case, on the eve of the 2002 general election, counsel for AKRTL notified the Alaska Public Offices Commission that AKRTL or a similarly-named affiliate[2] planned a telephone electioneering campaign costing more than $500. Specifically, it planned to recite the following script, which refers by name to the Democratic and Republican gubernatorial candidates who were to appear on the ballot:

> Alaska Right to Life is always on the forefront of implementing pro-life legislation within our state, such as banning partial birth abortion, establishing parental consent and stopping state

[2] AKRTL is affiliated with Alaska Right to Life Political Action Committee ("AKRTL-PAC") and Alaska Right to Life, Inc. ("AKRTL Inc."). AKRTL is a non-profit organization exempt from federal income tax under 26 U.S.C. § 501(c)(4). Verified Complaint at 4. AKRTL-PAC is an advocacy organization, and AKRTL Inc. is a tax-exempt educational organization. The three entities share the same director and the same board of directors. The degree of financial separation among the three entities is unclear from the record. AKRTL-PAC is registered as a "group" with the Alaska Public Offices Commission. AKRTL is not registered. Pet. App. 2a. Counsel for AKRTL initially indicated that AKRTL Inc. was planning the telephone campaign. Ex. 2 to Miles Opp. Summ. J. at 2.

> funding. We believe these are important issues affecting all Alaskans. Frank Murkowski supports Alaska Right to Life's pro-life vision by supporting a ban on partial birth abortion, establishing parental consent and stopping state funding. But Fran Ulmer stands in opposition to these measures. Be sure to vote.

Pet. 8 n.13.

The Commission confirmed that the script fell squarely within Alaska's definition of "electioneering" and that AKRTL would have to comply with Alaska's disclosure requirements. Pet. 9-10; Pet. App. 58a (Alaska Stat. § 15.13.400(5)); Ex. 5 to Miles Opp. Summ. J. Alaska's law requires only that certain forms of disclosure be made; it does not prohibit electioneering communications or limit the amount of money a nongroup entity can spend in communicating its electioneering message. Pet. App. 11a.

A few days later, AKRTL filed suit and shortly thereafter moved for summary judgment. AKRTL challenged various provisions as unconstitutional on their face and as applied to its planned electioneering communications.[3] Its complaint preceded this Court's decision in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), which upheld the constitutionality of the similar federal definition of "electioneering communication" in the Bipartisan

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[3] The court of appeals summarized AKRTL's case as challenging (1) Alaska's definition of "electioneering communication," (2) the requirement that AKRTL register before making its campaign finance expenditures, (3) the requirement that AKRTL report its expenditures, (4) the requirement that AKRTL notify contributors and potential contributors that their contributions may be used to influence an election, and (5) the requirement that AKRTL disclose in its communications who is paying for its electioneering communications. Pet. App. 4a-5a.

Campaign Reform Act of 2002. In its complaint and its motion for summary judgment, AKRTL relied on essentially the same arguments that this Court later rejected in *McConnell*.

When it became apparent that this Court would move quickly to decide *McConnell*, the district court issued an order staying the case pending that decision. Order re Pending Motions in Abeyance (Aug. 26, 2003). In December 2003, this Court issued the *McConnell* opinion, rejecting the same bright-line "express advocacy" test that AKRTL had been asserting. After supplemental briefing on the effect of *McConnell*, the district court granted summary judgment against AKRTL and in favor of Miles. Pet. App. 42a-48a.

The United States Court of Appeals for the Ninth Circuit affirmed. In light of *McConnell*, the court stated it had "little trouble" concluding that Alaska's definition is not unconstitutionally vague or overbroad. Pet. App. 16a, 20a. With respect to the specific disclosure requirements, it applied strict scrutiny and found the burdens minimal and found the disclosure requirements justified by compelling state interests. Pet. App. 35a, 36a, 41a.

ARGUMENT

The court of appeals correctly held that Alaska's definition of "electioneering communication" does not violate the First Amendment. The decision of the court of appeals does not conflict with any decision of this Court or any other court of appeals, and it does not otherwise raise issues that should be settled by this Court. Further review therefore is unwarranted.

A. The court of appeals' decision relied upon and closely followed this Court's recent decision in *McConnell*.

The court of appeals' decision in this case does not conflict with a decision of this Court; to the contrary, it carefully follows this Court's recent decision in *McConnell* on a closely-related issue.

The message that AKRTL desired to communicate on the eve of the 2002 general election fell squarely within Alaska's definition of "electioneering communication," which is very similar to the definition that the Court upheld in *McConnell*. Alaska's definition reads:

> "electioneering communication" means a communication that (A) directly or indirectly identifies a candidate; (B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and (C) occurs within the 30 days preceding a general or municipal election

Pet. App. 58a (Alaska Stat. § 15.13.400(5)). The federal definition, upon which Alaska's definition was patterned, reads:

> The term "electioneering communication" means any broadcast, cable, or satellite communication which –
>
> (I) refers to a clearly identified candidate for Federal office;
>
> (II) is made within –
>
> (aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

> (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
>
> (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

2 U.S.C. § 434(f)(3)(A)(i) (Supp. 2003) *quoted in McConnell*, 540 U.S. at 190-91.

AKRTL's challenge to Alaska's definition relied on an argument that this Court subsequently rejected in upholding the federal definition in *McConnell*. AKRTL argued that in *Buckley v. Valeo*, 424 U.S. 1 (1976), and thereafter, this Court had established an "express advocacy" bright-line test limiting state regulation to electioneering communications that expressly advocate the election or defeat of a candidate, such as by saying "vote for" or "vote against" the candidate.[4] The Court rejected precisely this argument in *McConnell*:

> In short, the concept of express advocacy and the concomitant class of magic words were born of an effort to avoid constitutional infirmities [of vagueness and overbreadth in the particular statutory language]. We have long "rigidly adhered" to

[4] In its complaint, AKRTL alleged that "Alaska's definition fails to meet *Buckley*'s constitutionally mandated express advocacy standard." Verified Complaint at 17. In its motion for summary judgment, it argued that Alaska law violated the "express advocacy test," which, it claimed, "is a bright-line, clearly defining which political speech may be regulated." Alaska Right to Life Committee's Memorandum in Support of Motion for Summary Judgment at 20 (Nov. 26, 2002).

> the tenet "'never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied,'" for "[t]he nature of judicial review constrains us to consider the case that is actually before us[.]" Consistent with that principle, our decisions in *Buckley* and *MCFL* were specific to the statutory language before us; they in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech.

540 U.S. at 192-93 (footnotes and citations omitted).

Having rejected a bright-line express advocacy test of constitutionality, the Court then found no vagueness or overbreadth problems with the federal definition of electioneering. As to vagueness, the Court stated:

> We observe that new FECA § 304(f)(3)'s definition of "electioneering communication" raises none of the vagueness concerns that drove our analysis in *Buckley*. The term "electioneering communication" applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers or listeners. *These components are both easily understood and objectively determinable*. Thus, the constitutional objection that persuaded the Court in *Buckley* to limit FECA's reach to express advocacy is simply inapposite here.

Id. at 194 (emphasis added, citations omitted).

The Court then rejected the First Amendment challenge to disclosure requirements, finding the government's interests compelling.

> [T]he important state interests that prompted the *Buckley* Court to uphold FECA's disclosure requirements – providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions – apply in full to BCRA. Accordingly, *Buckley* amply supports application of FECA § 304's disclosure requirements to the entire range of "electioneering communications."

Id. at 196 (footnote omitted).[5]

Following *McConnell*, it is unsurprising that the court of appeals had little difficulty in upholding Alaska law given that the Alaska provisions in question were patterned on the federal provisions upheld in *McConnell*. Looking first at the claim of vagueness, the court found only two minor differences from the federal definition, neither of which made Alaska's definition vague.

> We have little trouble concluding that the definition of "electioneering communication" contained in § 15.13.400(15) [sic] is not unconstitutionally vague, either facially or as applied.
>
> * * *
>
> From the standpoint of vagueness, there are only two possibly significant differences between the federal and the Alaska definition of "electioneering communication." First, under the federal

[5] These governmental interests support Alaska's campaign finance disclosure requirements. In addition, another, recognized by this Court in *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (*MCFL*), applies here: the interest in "requiring that contributors be informed that their money may be used for such a purpose [*i.e.*, for political purposes]." *Id.* at 261.

> definition, the candidate must be identified "clearly." By contrast, under the Alaska definition, the candidate must be identified "directly or indirectly." Second, under the federal definition, the content of the communication is not described beyond what might be implicit in the requirement that the communication be "targeted to the relevant electorate." By contrast, under the Alaska definition, the communication must "address[] an issue of national, state, or local political importance and attribute[] a position on that issue to the candidate identified."

Pet. App. 16a-17a.

As to the first difference (Alaska's use of the term "directly or indirectly"), the court of appeals found that "since the words 'direct and indirect' together describe the complete universe of possible methods of identification, the Alaska statute has the actual effect of requiring no specific method of identification, just like the federal definition." *Id.* at 17a-18a. It added:

> The Alaska legislature chose two words – "directly" and "indirectly" – that in combination were well suited to its purpose of regulating campaign communications identifying particular candidates. "Indirectly" is an easily understood word in common English usage. In the context in which it is used, it is neither vague nor difficult to understand.

Id. at 18a.

As to the second difference (Alaska's use of the term "address an issue of national, state, or local political importance"), the court reasoned:

> By comparison, the only restriction in the federal definition is that the communication be "targeted to the relevant electorate." The Supreme Court in *McConnell* upheld the federal definition against a vagueness challenge, despite the failure to describe the content of an "electioneering communication" except for whatever description might be implicit in the phrase "relevant electorate." In our view, "relevant," as used in the federal definition, is at least as vague a term as the phrase "addresses an issue of national, state, or local political importance," as used in the Alaska definition. In context, the requirement in the federal definition that the communication be targeted to the "relevant electorate" pretty clearly means that the communication must concern some issue of political importance to that electorate. But, of course, "issue" and "political importance" are precisely the words used in the Alaska statute. Those words are accompanied by the words "national, state, or local," but, if anything, those words make the provision less rather than more vague.

Id. at 19a. Thus, the court of appeals properly found that Alaska's definition of "electioneering communication" was even clearer and less vague than that upheld in *McConnell*.

The court of appeals likewise stated that it had "little trouble concluding that the definition of 'electioneering communication' is not unconstitutionally overbroad." *Id.* at 20a. With respect to facial overbreadth, AKRTL argued that Alaska's definition of "electioneering communication" is overbroad because it is not restricted to "express advocacy" or its functional equivalent and it includes some of what AKRTL called "issue advocacy." *Id.* The court found *McConnell*'s rejection of the bright-line "express advocacy"

test dispositive of this argument. *Id.* at 22a-23a. It also rejected AKRTL's argument that "issue advocacy" is included in the Alaska definition because the statute expressly excludes issues communications. *Id.* at 22a.

The court also found AKRTL's overbreadth as-applied argument to be without merit.

> That proposed message refers to several issues concerning abortion, ascribes positions on those issues to the two gubernatorial candidates, and urges the listener to vote. Under any reasonable understanding of that message, the listener is being urged to vote for or against these two candidates based on the positions described in the message. Such a message is clearly regulable under both *Buckley* and *McConnell*.

Id. at 23a-24a.

The court of appeals then turned from the definition of "electioneering communication" to AKRTL's challenge to specific disclosure requirements. The court "assume[d] without deciding that strict scrutiny applies to all of the challenged disclosure requirements, and that Alaska must advance a 'compelling state interest' to justify them." *Id.* at 29a. It held that "[e]ven under this standard * * * Alaska's disclosure requirements are justified." *Id.*

Applying strict scrutiny, the court found that the registration, reporting, and disclosure requirements to be "not significantly burdensome" and "not particularly onerous." *Id.* at 30a, 35a. It found that these minimal burdens were justified by compelling state interests.

> In light of the nature of the burdens imposed on a nongroup entity by Alaska's registration and

> reporting requirements, we hold that these requirements are justified by compelling state interests. * * * [A]s stated * * * succinctly by the Court in *McConnell*, those interests are "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions." *McConnell*, 540 U.S. at 196.

Id. at 36a-37a. The court also found these compelling interests justified the requirement of disclosure of who pays for an electioneering communication. *Id.* at 41a; *see also* n.5, *supra*.

Thus, the court of appeals carefully and properly followed this Court's *McConnell* decision. AKRTL fails to show any conflict between the court of appeals' decision and *McConnell* or other decisions of this Court. Instead, it speculates that if this Court were to consider the merits of this case, it would reach a different conclusion that would conflict with the court of appeals' decision.[6] It also seizes on differences between Alaska's requirements and federal requirements approved in *Buckley*, *MCFL*, and *McConnell*, and argues that because Alaska law is somewhat different, a conflict exists. *E.g.*, Pet. 12-13, 17, 19. In its argument, AKRTL not only fails to show conflicting decisions, it relies on the same form of bright-line test of constitutionality

[6] The logical fallacy in assuming a different outcome to claim conflict is apparent from major headings in the petition in which AKRTL argues that "the 'electioneering communication' provision conflicts with the decisions of this Court and numerous decisions of other circuits by being unconstitutionally overbroad" and that "the 'electioneering communication' provision conflicts with decisions of this court and decisions of other circuits by being unconstitutionally vague." Pet. 15, 20.

that this Court expressly rejected in *McConnell*.[7] In short, AKRTL fails to show a conflict with decisions of this Court.

B. AKRTL fails to show a conflict with other appellate court decisions.

AKRTL also fails to show any conflict between the court of appeals' decision in this case and decisions of other courts of appeals.

AKRTL's first assertion of a conflict with the decisions of other courts of appeals is a passing reference to various federal and state appellate court decisions that it claims have "held that campaign finance laws that prohibit or regulate the discussion of public issues are constitutionally overbroad." Pet. 18-19 nn.15-17 and accompanying text. This reference, without any discussion, is wholly insufficient to demonstrate a conflict between the cited

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[7] *Compare* Pet. 12-13 ("[T]his Court has consistently protected the discussion of public issues by approving only limited regulation: a one time report on a narrow category of speech: 'express advocacy' and its fundamental equivalent, federally-defined 'electioneering communications.' Alaska, however, has greatly increased the level of regulation on a much broader category of expression * * * As a result, this petition should be granted because this case presents a matter of great public importance, because the decision of the Ninth Circuit conflicts with this Court's First Amendment jurisprudence, and because it creates numerous significant circuit splits.") (emphasis and citations omitted) *with McConnell*, 540 U.S. at 192-93 ("We have long rigidly adhered to the tenet never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied, for the nature of judicial review constrains us to consider the case that is actually before us. Consistent with that principle, our decisions in *Buckley* and *MCFL* were specific to the statutory language before us; they in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech.") (citations and internal brackets and quote marks omitted).

decisions and the Ninth Circuit decision that Alaska's definition of "electioneering communication" is not overbroad. Further, all of the cases cited in notes 15-17 of the petition pre-date *McConnell*, which was decided in 2003. Given that the court of appeals properly followed *McConnell*, which rejected the bright-line "express advocacy" versus "issue communication" distinction, any alleged "conflict" with pre-*McConnell* decisions of other circuits does not support this Court's review.

Finally, it is noteworthy that AKRTL did not argue to the court of appeals that the allegedly conflicting cases were persuasive.[8]

AKRTL's second assertion of a conflict with other appellate decisions is its reference to various federal and state appellate court decisions that it claims "have held such vague definitions unconstitutional or narrowly construed them, because they have not encompass [sic] only express advocacy." Pet. 22 nn.21-24 and accompanying text. Again, a passing reference without any discussion of the holdings or analysis is insufficient to demonstrate a conflict with the court of appeals' decision that Alaska's definition of "electioneering communication" is not vague. Again, all the cases cited in footnotes 21-24 of the petition pre-date *McConnell*'s rejection of a rule of "express advocacy," therefore any conflict does not warrant this Court's review. And again, AKRTL did not argue below that the

[8] Of the 10 allegedly conflicting cases cited at notes 15-17 of the petition, AKRTL appears not to have discussed or even mentioned any in its appellate brief or reply brief below. *See* Brief of Appellant at iv-v; Reply Brief of Appellant at iv-v (tables of authorities).

allegedly conflicting cases from other circuits were persuasive.[9]

AKRTL's third claim of a conflict with other appellate decisions comes in its mention of decisions of two other circuits and of another panel of the Ninth Circuit that, it claims, "held that, in the wake of *McConnell*, the Constitution continues to require the courts to employ the express advocacy test to vague and overbroad statutes." Pet. 23 nn.25-26 and accompanying text. Again, AKRTL fails to analyze the cases and fails to demonstrate that a conflict exists which warrants this Court's review. Moreover, even based on AKRTL's summary description of these cases, it is clear that decisions of courts "employ[ing] the express advocacy test to vague and overbroad statutes" would not conflict with the Ninth Circuit's decision at issue because that court found the Alaska statutes neither vague nor overbroad.

Finally, AKRTL asserts, again without any discussion, that this decision conflicts with the decisions of other federal and state appellate courts that it claims "recognize the 'major purpose' test." Pet. 26. Once again, such an assertion without any discussion of the cases fails to demonstrate a conflict exists warranting this Court's review. Further, Alaska's definition of "nongroup entity" *does* include a "major purpose" element, one that focuses

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[9] Of the 19 allegedly conflicting cases cited at notes 21-24 of the petition, AKRTL appears to have raised only the Ninth Circuit case of *American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979 (9th Cir. 2004) in its appellate brief below. It mentioned a few of the other allegedly conflicting cases in passing in its reply brief, and even there did not even mention most of the cases that it now claims raise a conflict. *See* Brief of Appellant at iv-v; Reply Brief of Appellant at iv-v (tables of authorities).

on the action the nongroup entity takes, such as making electioneering communications, rather than on the more amorphous purpose of the organization, which seems to be the focus of the test asserted by AKRTL.[10] Thus, no conflict exists.

C. This case does not involve an important question of federal law that should be settled by this Court notwithstanding the absence of conflicting decisions.

Throughout its petition, AKRTL refers to the challenged provisions as "prohibiting" AKRTL's ability to engage in political speech. *See, e.g.*, Pet. 3, 15, 16, 25. This is misleading and factually incorrect, since the provisions at issue only require *disclosure* of electioneering activities and do not *prohibit* any speech. As the court of appeals stated, "None of the challenged provisions limits the amount of money a nongroup entity such as AKRTL may spend [on electioneering communications]. Rather, the provisions require only that certain forms of disclosure be made." Pet. App. 11a.

AKRTL's argument that the "Alaska provisions seriously limit the ability of advocacy groups to discuss

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[10] Alaska defines "nongroup entity" as an entity "*that takes action the major purpose of which is to influence the outcome of an election*, and that (A) cannot participate in business activities; (B) does not have shareholders who have a claim on corporate earnings; and (C) is independent from the influence of business corporations." Pet. App. 60a-61a (Alaska Stat. § 15.13.400(13) (emphasis added)). AKRTL asserts in its petition: "AKRTL does not have the major purpose of nominating or electing candidates. * * * As a result, the court's decision below, upholding these PAC-style requirements, conflicts with the decisions of this Court [and] creates a Circuit split with the [specified circuits], which recognize the 'major purpose' test." Pet. 25-26.

issues of public concern" also is misleading and incorrect, in two ways. First, the provisions at issue apply only to that narrow category of speech that falls within Alaska's definition of "electioneering communications" and not to broader discussion of "issues of public concern." For a nongroup entity's speech to meet this definition, and hence for disclosure to be required, the communication must (1) occur within the 30 days preceding an election, (2) cost more than $500, (3) identify a candidate, (4) address an issue of political importance, and (5) attribute a position on that issue to the candidate identified. Pet. App. 56a-57a (Alaska Stat. § 15.13.400(3)); *id.* at 58a (Alaska Stat. § 15.13.400(5)). Thus, registration and disclosure requirements are triggered only by electioneering expenditures that meet all of these threshold elements. They do not extend to general discussion of issues of public concern.

Second, AKRTL's argument that this case involves limitations on the ability of "advocacy groups" in general to discuss issues of public concern also is misleading. Its challenge relates to (and it has standing to challenge only) the constitutionality of the provisions applicable to that narrow category of nongroup entities that are organizations that are tax-exempt under section 501(c)(4) of the Internal Revenue Code. *See* n.2, *supra*. This limits the general applicability of this case. For example, the registration requirements of which it complains apply only to corporations (and in fact only to corporations organized under section 501(c)(4) of the Internal Revenue Code) and do not apply generally to non-corporate advocacy groups.[11]

[11] AKRTL complains that Alaska imposes a "time-consuming and burdensome procedure to determine if one is a 'nongroup entity,' which must be completed before it is permitted to make either an independent

(Continued on following page)

Finally, AKRTL's suggestion that the provisions at issue go "well beyond" those approved recently by this Court in *McConnell* not only is unsupported, it is contrary to the court of appeals' decision. Pet. 14. AKRTL fails to show how Alaska law goes so far "beyond what this Court approved in *McConnell*" that this case presents questions of important public concern warranting review less than three years after *McConnell*. *Id.* Moreover, its argument that Alaska goes well beyond federal law is undercut by the fact that the court of appeals considered and rejected its overbreadth and burden claims. Its argument that review is warranted by a multiplicity of state statutes that go beyond federal law also is undercut by the apparent lack of any other state court decisions on the constitutionality of state provisions. *See* Pet. 14 n.14 (asserting that "fourteen states have 'electioneering communication' provisions, most of which are broader than the federal provision," but not referring to any decisions on their constitutionality).

In sum, AKRTL has wholly failed to show any basis for its assertion that this case presents an important question of federal law that should be settled by this Court.

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expenditure or an electioneering. Alaska Admin. Code tit. 2, § 50.292." Pet. 4 n.6. However, it fails to acknowledge that as a 501(c)(4) corporation, it is subject to different requirements under Alaska Admin. Code tit. 2, § 50.292(a) than are other nongroup entities, which have more streamlined registration procedures. Under Alaska Admin. Code tit. 2, § 50.292(b), all that is required for registration "if the nongroup entity is not a corporation, [is] a copy of the bylaws or minutes or an affidavit signed by an owner, officer, chair, director, partner, or board member showing that the nongroup entity does not participate in business activities, has no shareholders, and is independent from the influence of business corporations." Pet. App. 64a (Alaska Admin. Code tit. 2, § 50.292(b)(2)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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